

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Charis Jones	Team: Squad #7	CCRB Case #: 201903764	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Friday, 04/19/2019 1:32 AM	Location of Incident: Inside the 79th Precinct Stationhouse	Precinct: 79	18 Mo. SOL 10/19/2020	EO SOL 6/5/2021	
Date/Time CV Reported Fri, 04/19/2019 2:39 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 05/02/2019 11:23 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Markevens Pierre	03005	947353	079 PCT
2. SGT Ryan Oshea	03464	948016	079 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Daniel Shouler	13072	966337	079 PCT
2. POM Victor Roopnarine	15175	957104	079 PCT
3. POM Michael Zweifler	14406	961483	079 PCT
4. POM Anthony Bomparola	15054	955761	079 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Markevens Pierre	Abuse: Police Officer Markevens Pierre threatened § 87(2)(b) with the use of force.	
B.POM Markevens Pierre	Force: Police Officer Markevens Pierre struck § 87(2)(b) with a Baton.	
C.SGT Ryan Oshea	Force: Sergeant Ryan Oshea used physical force against § 87(2)(b)	

## Case Summary

On April 19, 2019, Sergeant Monica Chong of the 79<sup>th</sup> Precinct called IAB and filed the following complaint on behalf of § 87(2)(b) generating original log # 19-15383. The CCRB received the log on May 2, 2019.

On April 19, 2019, at approximately 1:32 a.m., in the holding cell area of the 79<sup>th</sup> Precinct stationhouse in Brooklyn, Police Officer Markevens Pierre (assigned to the 79<sup>th</sup> Precinct) attempted to search § 87(2)(b) before he was transported to Brooklyn Central Booking. § 87(2)(b) refused to be searched and PO Pierre removed and displayed PO Shouler's (also assigned to the 79<sup>th</sup> Precinct) taser to § 87(2)(b) (**Allegation A**, § 87(2)(g)). PO Pierre attempted to handcuff § 87(2)(b) and he refused. PO Pierre and § 87(2)(b) engaged in a physical altercation during which time PO Pierre used his asp against § 87(2)(b) (**Allegation B**, § 87(2)(g)). At that time, Sergeant Ryan Oshea (also assigned to the 79<sup>th</sup> Precinct) entered the holding cell area to assist PO Pierre in restraining § 87(2)(b). Sgt. Ryan Oshea punched § 87(2)(b) in the head two times (**Allegation C**, § 87(2)(g)). § 87(2)(b) was arrested for assault on a police officer (Board Review 01).

The investigation obtained video footage from the 79<sup>th</sup> Precinct stationhouse security cameras that capture the entire incident (audio not included) (Board Review 02).

## Findings and Recommendations

### **Allegation (A) Abuse of Authority: Police Officer Markevens Pierre threatened § 87(2)(b) with the use of force.**

When this complaint was initially filed with IAB, no contact information for § 87(2)(b) was provided. The investigation was unable to locate § 87(2)(b) and thus, he was unable to provide a statement (Board Review 03).

As mentioned above, the investigation obtained stationhouse footage from the 79<sup>th</sup> Precinct holding cell area, which captured the incident (Board Review 02). An Input-ace clip was produced to show the context of the allegation as described (Board Review 04). At the beginning of the clip, § 87(2)(b) enters the holding cell area and begins to put on his bandana. PO Pierre, PO Shouler, and an additional female officer are present. At 00:11 seconds, PO Pierre says something to § 87(2)(b) and he shakes his head in response and continues to gather his items. At 00:36 seconds, PO Pierre can be seen talking to § 87(2)(b) again. § 87(2)(b) does not reply and bends over to put his shoe laces on. At 00:52 seconds, PO Shouler and PO Pierre approach § 87(2)(b). At 00:54 seconds § 87(2)(b) clenches both of his fists and takes a fighting stance towards the officers. Between 00:59 seconds and the 01:07 minute mark, PO Pierre removes PO Shouler's taser from his holster, reaches for handcuffs located on the desk with his free hand, and walks towards § 87(2)(b). PO Pierre says something to § 87(2)(b) while holding the taser and the handcuffs. At 01:07 minutes, PO Pierre gives PO Shouler his taser back and PO Shouler puts it back in the holster.

PO Pierre (Board Review 05) testified that he informed § 87(2)(b) that he needed to be searched as soon as he entered the holding cell. § 87(2)(b) responded that he had already been searched and refused to be searched again. § 87(2)(b) continued to put on his clothing and curse at PO Pierre. § 87(2)(b) appeared frustrated and "in the mood to fight." PO Pierre told PO Shouler to let § 87(2)(b) vent because he did not want the situation to escalate. As § 87(2)(b) began to put on his belt and bandana, PO Pierre told him if he did not submit to being searched he would have to be handcuffed. § 87(2)(b) refused and continued to curse. As PO Pierre approached him, § 87(2)(b)

stood in a fighting stance with his arms up and fists clenched. PO Pierre removed PO Shouler's taser from his holster as a precautionary measure because § 87(2)(b) was not complying with the search and was behaving aggressively.

NYPD Patrol Guide Procedure 221-08 states that officers may use a conducted electrical weapon (CEW) against persons who are exhibiting active aggression. Active aggression is defined as a threat or overt act of an assault (through physical or verbal means), coupled with the present ability to carry out the threat or assault, which reasonably indicated that an assault or injury to any person is imminent (Board Review 06).

§ 87(2)(g)

**Allegation (B) Force: Police Officer Markevens Pierre struck § 87(2)(b) with a baton.**

**Allegation (C) Force: Sergeant Ryan Oshea used physical force against § 87(2)(b)**

The footage cited above (Board Review 03) shows that after PO Pierre gives PO Shouler the taser back, he attempts to handcuff § 87(2)(b) but is unsuccessful. From 01:07 minutes to 01:20 § 87(2)(b) pulls his arm away from PO Pierre various times. Eventually PO Pierre gets one of § 87(2)(b)'s hands into a cuff. § 87(2)(b) pulls his hand out of the cuff and in the same motion pushes PO Pierre back with both of his hands and squares up in a fighting stance again and lunges at PO Pierre. PO Pierre steps back and removes his baton from his holster. PO Pierre extends his baton with one hand and reaches his free hand in front of him to hold § 87(2)(b) back from attacking him. Between 01:21 and 01:28, PO Pierre strikes § 87(2)(b) with his baton seven times while attempting to push him back and § 87(2)(b) throws approximately 10 punches back at PO Pierre. At 01:29 minutes PO Pierre pushes § 87(2)(b) against the wall. At the same time Sgt. Oshea and four additional officers enter the holding area and assist PO Pierre in restraining § 87(2)(b). Between 01:30 and 01:33 minutes, § 87(2)(b)'s knees appear to kick Sgt. Oshea and Sgt. Oshea can be seen striking the left side of § 87(2)(b)'s face with a closed fist. From 01:34 to the end of the video (01:46 minutes) § 87(2)(b) is taken to the ground by Sgt. Oshea, PO Pierre, and other officers present.

PO Pierre (Board Review 05) testified that § 87(2)(b) lunged at him after he was unsuccessful at handcuffing him. § 87(2)(b) proceeded to throw punches at his shoulders and attempted to kick him. PO Pierre removed his baton and used it to defend himself against § 87(2)(b)'s actions. PO Pierre decided to use his baton instead of his taser because he wanted the surveillance footage to capture the extent of § 87(2)(b)'s aggression at that time. PO Pierre believed that if he tased § 87(2)(b) the video would inaccurately paint PO Pierre as the aggressor. PO Pierre could not recall where he attempted to hit § 87(2)(b) with the baton or if the baton made contact with § 87(2)(b)'s body. He did not know if the baton was effective in gaining compliance from § 87(2)(b). PO Pierre sustained abrasions to his face and shoulder and was out Line Of Duty from April 20, 2019, to June 6, 2019 as a result of this incident. He is currently on restricted duty.

Sgt. Oshea (Board Review 07) testified that he was at the stationhouse coming off his tour with other members of his anti-crime team when he heard an officer yell for help from the holding cell area. Sgt. Oshea, followed by other anti-crime officers, rushed to the entrance of the cell area. He immediately saw PO Pierre use his baton to hit the lower portion of § 87(2)(b)'s body. § 87(2)(b) threw approximately seven punches in return, one of which connected with PO Pierre's face. Sgt. Oshea entered the room and attempted to push § 87(2)(b) against the wall, however, § 87(2)(b) pushed away from the officers and continued to kick his knees in the direction of Sgt. Oshea's groin area. Sgt. Oshea punched § 87(2)(b)'s face twice to stop him from injuring other officers. He was concerned that § 87(2)(b) would attempt to escape if he was not placed into handcuffs. Sgt. Oshea did not specifically intend to strike § 87(2)(b) in the face; the situation was evolving rapidly and he wanted to stop § 87(2)(b) from assaulting other officers. Sgt. Oshea prepared a TRI in regards to the incident, which acknowledges his use of the hand strikes described above (Board Review 08).

NYPD Patrol Guide Procedure 221-02 defines active resisting as physically evasive movements to defeat a member of service's attempt at control including. Active aggression is defined as a threat or overt act of an assault (through physical or verbal means), coupled with the present ability to carry out the threat or assault, which reasonably indicated that an assault or injury to any person is imminent (Board Review 09).

NYPD Patrol Guide Procedure 221-01 states that force may be used when it is reasonable to ensure the safety of a member of service or when it is reasonable to place a person in custody or prevent escape from custody. In determining whether the use of force is reasonable, officers must consider the nature and severity of the crime/circumstance, the immediacy of perceived threat or harm to the subject or MOS, and whether the subject is actively resisting custody or attempting to evade arrest by flight (Board Review 10).

§ 87(2)(g)  
[REDACTED]

The video shows Sgt. Oshea entering the holding cell during PO Pierre and § 87(2)(b)'s struggle. On his own account, Sgt. Oshea witnessed § 87(2)(b) strike PO Pierre in the face. Since § 87(2)(b) was actively resisting at that time, Sgt. Oshea was also concerned that § 87(2)(b) would attempt to escape if he was not handcuffed. When Sgt. Oshea approached § 87(2)(b), § 87(2)(b) kned him in the groin area. § 87(2)(g)  
[REDACTED]

### Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 11).
- PO Pierre has been a member of service for 11 years and has been a subject in three CCRB complaints and three allegations, none of which were substantiated.
- Sgt. Oshea has been a member-of-service for 10 years and has been a subject in four CCRB complaints and 12 allegations, none of which were substantiated.

### **Mediation, Civil and Criminal Histories**

- This complaint was unsuitable for mediation.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[REDACTED]
- A Notice of Claim has been sent to the New York City Office of the Comptroller and will be added to the case file upon receipt.

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Squad No.: \_\_\_\_\_

Investigator: \_\_\_\_\_

Signature	Print Title & Name	Date
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Squad Leader: \_\_\_\_\_

Signature	Print Title & Name	Date
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Reviewer: \_\_\_\_\_

Signature	Print Title & Name	Date
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